INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Summary of argument	6
Argument	8
I. The historical background and development of the Social Security Act show that the provisions here involved were part of a Congressional plan to provide benefits generally only to those persons who were likely to have lost support as a result of a wage earner's disability	8
II. The limitation in 42 U.S.C. 416(h)(3)(B) that Social Security disability benefits will be paid only to those illegitimate children who meet the conditions there specified has a rational basis because it furthers the permissible Congressional objective of providing benefits only to categories of persons likely to have lost support as a result of the disability of a wage earner	13
III. The validity of the provisions of the Social Security Act here challenged depends upon whether they are rationally based and not upon whether they serve a compelling state interest	24
Conclusion	28
Appendix A	1a
Appendix B	5a

533-480—74——1

CITATIONS

Cases:

	Page
Beaty v. *Weinberger*, 478 F. 2d 300	17, 26
Carrington v. *Rash*, 380 U.S. 89	22
Dandridge v. *Williams*, 397 U.S. 471	23, 24, 25
Davis v. *Richardson*, 409 U.S. 1069, affirming, 342 F. Supp. 588	23, 25
Flemming v. *Nestor*, 363 U.S. 603	18
Frontiero v. *Richardson*, 411 U.S. 677	27
Glona v. *American Guarantee Co.*, 391 U.S. 73	27
Gomez v. *Perez*, 409 U.S. 535	4, 23, 24, 27
Griffin v. *Richardson*, 409 U.S. 1069, affirming 346 F. Supp. 1226	23
Hagler v. *Finch*, 451 F. 2d 45, certiorari denied, 405 U.S. 1071	20
Jefferson v. *Hackney*, 406 U.S. 535	23
Labine v. *Vincent*, 401 U.S. 532	7, 27
Levy v. *Louisiana*, 391 U.S. 68	27
Morris v. *Richardson*, 455 F. 2d 775, certiorari dismissed a improvidently granted, 410 U.S. 422	20
New Jersey Welfare Rights Organization v. *Cahill*, 411 U.S. 619	27
North American Co. v. *Securities and Exchange Commission*, 327 U.S. 686	23
Norton v. *Weinberger*, 364 F. Supp. 1117	13, 15, 17, 26, 27
Parker v. *Secretary of Health, Education and Welfare*, 453 F. 2d 850	15
Perry v. *Richardson*, 440 F. 2d 677	15
Richardson v. *Belcher*, 404 U.S. 78	7, 24, 25
Richardson v. *Perales*, 402 U.S. 389	21
Severance v. *Weinberger*, 362 F. Supp. 1348	26
Shapiro v. *Thompson*, 394 U.S. 618	25

Cases—Continued

	Page
United States Department of Agriculture v. *Moreno*, 413 U.S. 528	21
United States Department of Agriculture v. *Murry*, 413 U.S. 508	18
Watts v. *Veneman*, 476 F. 2d 529	15, 25
Weber v. *Aetna Casualty & Surety Co.*, 406 U.S. 164	21, 27
Williamson v. *Lee Optical Co.*, 348 U.S. 483	22
Statutes:	
Social Security Act 49 Stat. 620, as amended, 42 U.S.C. 301, *et seq:*	
42 U.S.C. 402(d)	2, 26, 1a
42 U.S.C. 402(d)(3)	14, 26, 27
42 U.S.C. 402(d)(8)(C)	27
42 U.S.C. 402(d)(8)(E)	20
42 U.S.C. (1970 ed., Supp. II) 402(d)(8)(D)	20
42 U.S.C. 415	14
42 U.S.C. 416	2a
42 U.S.C. 416(c)(5)	11
42 U.S.C. 416(e)	27, 2a
42 U.S.C. 416(h)	26
42 U.S.C. 416(h)(2)	2, 14, 26, 27, 28, 2a
42 U.S.C. 416(h) (1958 ed.)	11
42 U.S.C. 416(h)(3)	2, 3, 4, 5, 13, 14, 17
42 U.S.C. 416(k)	11
Social Security Amendments of 1960, Pub. L. 86–778, § 201(b), 74 Stat. 946	20
Social Security Amendment of 1967, Pub. L. 90–248, § 112(a), 81 Stat. 838–839	20
Social Security Amendments of 1972, P.L. 92–603, § 111(a), 86 Stat. 1346–1347	27
Social Security Amendments of 1972, P.L. 93–66, § 240(a); 87 Stat. 161	21

Miscellaneous:

	Page
H. Rep. No. 728, 76th Cong., 1st Sess.	9
H. Rep. No. 2526, 79th Cong., 2d Sess.	11
Krause, *Illegitimacy; Law and Social Policy*, (1971)	27
Rule 23(c)(1), Fed.R.Civ.P.	4
S. Rep. No. 404, 89th Cong., 1st Sess.	13, 22
S. Rep. No. 92-1230, 92d Cong., 2d Sess.	20
Social Security Administration Claims Manual	50
Section 2411	11a
Section 2420.6	6a
Section 2421	26
Section 2424.5	5a
Section 2424.6	5a
Section 2424.7	5a
Section 2654	5a, 11a
Section T4510(d)(2)	10a, 11a, 12a
Section 4529(d)(2)	7a

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-6609

EUGENIO AND ALICIA JIMENEZ, BY THEIR FATHER AND NEXT FRIEND RAMON JIMENEZ, APPELLANTS

v.

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE APPELLEE

OPINION BELOW

The opinion of the three-judge district court is reported at 353 F. Supp. 1356.

JURISDICTION

The judgment of the three-judge district court was entered on January 30, 1973. A notice of appeal to this Court was filed on February 22, 1973. The jurisdictional statement was filed on April 23, 1973, and probable jurisdiction was noted on December 3, 1973.

The jurisdiction of this Court rests on 28 U.S.C. 1253.

QUESTION PRESENTED

Whether Congress may constitutionally provide that an illegitimate child who cannot qualify for benefits under any other provision of the Social Security Act may obtain benefits only if the disabled wage earner father contributed to the child's support or lived with him prior to his disability.

STATUTES INVOLVED

The relevant portions of Section 202(d) and 216(h)(3)(B) of the Social Security Act, 42 U.S.C. 402(d) and 416(h)(3)(B), are set out in Appendix A, pp. 1A–4A, *infra*.

STATEMENT

This case involves the constitutionality of a provision of the Social Security Act which specifies the circumstances under which children may receive benefits on the Social Security account of a wage earner. Legitimate or legitimated children, illegitimate children who can inherit their parent's property under the intestacy laws of the state of his domicile and show dependency at the time of filing an application, and those who cannot inherit only because their parents' ceremonial marriage was invalid for non-obvious defects, are entitled to receive benefits without any further showing (42 U.S.C. 402(d)(3), 416(h)(2)). In 1965, the Act was amended to allow benefit payments to illegitimate children who do not satisfy these requirements if, prior to the time the wage earner be-

came disabled, reached age 65 or died, he (1) acknowledged his paternity of the child in writing, (2) was determined in a court decree to be the father of the child, (3) was ordered by a court to contribute to the child's support because he was the father, or (4) was living with the child or was contributing to the child's support (42 U.S.C. 416(h)(3)).

Ramon Jimenez, a covered wage earner under the Social Security Act, became disabled in April 1963, and became entitled to disability benefits in October 1963. Prior to that time he left his wife and five children and began living with Elizabeth Hernandez. Three children were born of that relationship, but Jimenez has not attempted to marry Hernandez and thus legitimate the children.[1] Jimenez resides in Illinois, a state which does not allow a non-legitimated illegitimate child to inherit from his father.[2] Thus, when Jimenez applied for children's benefits on behalf of those three children, the Secretary granted benefits to Magdalena, who was *in utero* at the time of Jimenez's entitlement to benefits, but ruled that the two other children, Eugenio and Alicia, did not qualify for benefits under 42 U.S.C. 416(h)(3)(B) because they were born after their father became entitled to disability insurance benefits (App. 9).

Appellants brought this action for review of the Secretary's final decision.[3] A three-judge district court

[1] Ill. Ann. Stat. Ch. 3, Sec. 12.

[2] *Ibid.*

[3] Count II, paragraph 3, of the complaint describes this suit as a class action on behalf of "all claimants for child's social security insurance benefits, who are born out of wedlock after their fathers have become entitled to receive Social Security

was convened to consider appellants' contention that 42 U.S.C. 416(h)(3)(B) unconstitutionally discriminates against Jimenez's children who were born after he became disabled.

Upon cross motions for summary judgment, the court, with one judge dissenting, upheld the Secretary's denial of benefits to Alicia and Eugenio and sustained the validity of 42 U.S.C. 416(h)(3)(B) (App. 22–29). The court held that the insurance benefits claimed were not a "fundamental right," and that the "rational basis" rather than the "compelling state interest" test is the proper standard by which to determine the constitutionality of legislative classifications based upon legal status at birth. The court distinguished *Gomez* v. *Perez*, 409 U.S. 535, which had invalidated a statute excluding *all* illegitimate children from the statutory right to support afforded legitimate children, on the ground that the exclusion involved in the present case applies "only to a well-defined category of [illegitimates] * * * suggesting that factors other than illegitimacy might account for the discrimination here." 353 F. Supp. at 1360 (App. 27).

Applying the rational basis test, the court held that the classification here is rationally related to the legitimate governmental interest in avoiding spurious claims. The court reasoned (353 F. Supp. at 1361) (App. 28):

---

insurance benefits by reason of old age, disability, or death" (App. 16). The district court did not certify the case as a class action in accordance with Rule 23(c)(1), Fed. R. Civ. P.

> [T]he requirement that § 416(h)(3)(B) children be born before the onset of their parent's disability is based upon the very simple, self-evident assumption that a person with nothing to gain from a spurious acknowledgement of paternity is not as likely to do so as one who could thereby increase his monthly income by one-half.

The court rejected appellants' contention that the legislative purpose of excluding spurious claims should be achieved by "less [drastic] means," noting that such means are not constitutionally mandated "under traditional notion of equal protection" (App. 28). Finally, the court doubted the efficacy of "more restrictive regulations and internal administrat[ion]," suggested by appellants as less drastic means for achieving the legislative goal of avoiding spurious claims, stating (*ibid*):

> Surely the parties to the collusion, who are in pari delicto, have little incentive to come forward and confess the error of their ways. And it would truly be the exceptional father who, having sired a child out of wedlock, would subsequently come forward, acknowledge his real paternity, and seek to have his child removed from the rolls of public welfare.

Accordingly, the district court held that the classification in 42 U.S.C. 416(h)(3)(B) was rationally based, and dismissed the suit. 353 F. Supp. at 1362; App. 27–28.

533-480—74——2

SUMMARY OF ARGUMENT

I

The Social Security program has historically been designed to replace support lost by a wage earner or those dependent on him as a result of his death, disability or old age. In furtherance of this goal, Congress has reasonably established criteria to delineate classes of persons who are more likely to have lost support as a result of disability. Congress has also imposed various requirements designed to prevent manipulation of events solely for the purpose of obtaining benefits.

II

In the present case Congress has provided that a child who cannot inherit his father's estate under state intestacy laws may not obtain social security benefits unless the father took one of a number of qualifying actions prior to his disability. This provision is rationally related to the purposes of the Act. Children not in being at the time of the father's disability cannot have lost any existing support as a result of such disability. Moreover, since children's benefits under the Social Security Act were instituted as a substitute for lump sum death benefits, it is also rational to relate such benefits to provisions of state intestacy laws.

Congress could also have reasonably concluded that after becoming disabled, men who were not fathers might be more likely to acknowledge paternity and thus increase their benefits without cost. As this Court

noted in *Richardson* v. *Belcher*, 404 U.S. 78, 84 "[w]e have no occasion * * * to judge for ourselves whether the apprehensions of Congress were justified by the facts."

Congress may legislate in a social welfare area such as this by dealing with only one aspect of a problem, or by advancing one step at a time toward a solution. Congress may also consider problems of administration in determining how to deal with the problem. Congress has here reasonably made the judgment that consideration of a number of factors justifies refusing to extend benefits to the narrow category of illegitimates involved in this case.

III

Illegitimacy has not been, and should not be, viewed as a "suspect category" so that a law creating separate categories for illegitimate children requires a "compelling state interest" rather than a "rational basis" to sustain it. Illegitimacy is not a visible condition, the status of children as illegitimate can be changed, and illegitimacy is a relevant factor in determining the disposition of estates at death. *Labine* v. *Vincent*, 401 U.S. 532. Since the instant case involves benefits which were provided as a substitute for death payments and involves judgments as to the consequences of various familial relationships, Congress had a rational basis for concluding that illegitimacy should be considered in evaluating the likelihood that a particular class of children lost support as a result of the disability of a wage earner.

ARGUMENT

I

THE HISTORICAL BACKGROUND AND DEVELOPMENT OF THE SOCIAL SECURITY ACT SHOW THAT THE PROVISIONS HERE INVOLVED WERE PART OF A CONGRESSIONAL PLAN TO PROVIDE BENEFITS GENERALLY ONLY TO THOSE PERSONS WHO WERE LIKELY TO HAVE LOST SUPPORT AS A RESULT OF A WAGE EARNER'S DISABILITY

Since its inception, the Social Security Act has been designed primarily to provide substitute support to those who have lost support through the inability of a wage earner to continue earning. The Act has also continuously contained provisions to simplify problems of proof and prevent spurious claims. In addition, it has contained provisions to eliminate claims which, while not fraudulent, have led to and have arisen out of the manipulation of events to create eligibility. These provisions have affected the full range of beneficiaries under the Act and have not been limited to illegitimate children or children generally. To demonstrate these principles, we now provide a brief history of such provisions.

The original Social Security Act, 49 Stat. 620, provided only retirement benefits for the wage earner himself. There was accordingly no need for provisions guarding against persons improperly becoming beneficiaries under the Act. On the death of the wage earner, a lump sum was paid to his estate. *Id.* Sec. 203(a).

In 1939, however, the Act was changed to provide benefits (1) to the spouse and children of a retired

wage earner and (2) to the children and widow or widower of a deceased wage earner in place of the lump sum death payment. See H. Rep. No. 728, 76th Cong., 1st Sess., p. 7. At that point problems of definition and coverage arose. Who is a "wife"? Who is a "child"? Should benefits be paid to a woman who marries a retired wage earner on his deathbed?

As a first answer, Congress provided that definitions of familial relation should follow state intestacy laws relating to children, parents and spouses. 53 Stat. 1378, Sec. 209(m). Thus, the well-developed state laws of domestic relations would be used to determine the effect of common law marriages, and to define the rights of step-children and other relations, as well as the status of illegitimate children.

Since survivor's and dependent's benefits were originally conceived as a substitute for a payment to the wage earner's estate, a rule which determined eligibility under state intestacy laws was rationally based.

In addition, Congress took other steps to insure that benefits were paid only to those who were likely to have lost support as a result of the wage earner's retirement or death, and to prevent the manipulation of the system. Section 209(i) required that a woman, in order to receive wife's benefits, must have married the wage earner before 1939, when these benefits were provided, or before he reached the age of 60. If, however, she had borne the wage earner a child at any time, that entitled her to benefits, since that fact itself constituted the necessary indicia of likelihood of having had support. 53 Stat. 1377. Similarly, widows were

not entitled to benefits unless they had been married to the wage earner for a year before his death unless they had borne him a child. *Id.*, Section 209(j). Section 209(k) provided that children of women covered under the two preceding sections could receive benefits only if their mothers could.

Congress in the 1939 Amendments also indicated its intention to limit benefits to persons likely to have lost support as a result of the wage earner's disability. It provided that although legitimate children were ordinarily deemed dependent on their parents and thus eligible for benefits, they would not be so deemed where they had actually been adopted by another person. 53 Stat. 1364, Sec. 202(c)(3)(B). Finally, the payment of lump sums to the deceased's estate, already largely changed to a program of survivor's payments, was amended to provide that if there were no person eligible for survivor's payment, the money would go to specified relatives, rather than to the estate. *Id.* at 1366–1367, Sec. 202(g). This change also seemingly reflected the view that benefits should depend upon loss of support.

Since 1939, Congress has made numerous changes in these requirements, reflecting experience in their operation and effect. In making these changes Congress has been sensitive to avoiding the provision of benefits to persons in situations which would permit the creation and manipulation of family relationships primarily to qualify for benefits. Thus, in 1946 the requirement for wife's benefits that the marriage take place before the wage earner reached age 60 was changed to a requirement that the couple must have

been married for three years before benefits could be paid. The House Committee report noted (H. Rep. No. 2526, 79th Cong., 2d Sess. at 25):

> The original provision was intended to prevent exploitation of the fund by claims for benefits from persons who married beneficiaries solely to get wife's benefits.

The Committee concluded, however, that a three-year waiting period would sufficiently serve this purpose, since it doubted that many persons would marry for monetary benefits if they had to wait three years for them.[4] The one-year period of marriage necessary for widows to qualify for benefits has been reduced to nine months, and additional ameliorative provisions have been added. See 42 U.S.C. 416(c)(5), 416(k).[5]

When benefits for dependents of disabled persons were added to the Act in 1958, Congress retained the conceptual framework it had established for death and retirement, under which relationships had to have existed for a certain time before disability. Thus, spouses were required to have been married for a specified period of time before a dependent's disability benefit would be paid, just as in the case of retirement. 72 Stat. 1021–1023. The same provisions for establishment of relationships by reference to state law were retained. 42 U.S.C. 416(h)(1958 ed.).

In 1965, when Congress extended benefits to certain illegitimate children who would not otherwise have

---

[4] The changed provision is found at 60 Stat. 988. The period was later reduced to one year. 74 Stat. 950.

[5] This provision is being challenged in *Salfi* v. *Weinberger*, C-73-1863-ACW (N.D. Cal.), filed October 19, 1973.

qualified, it established objective criteria of eligibility which would usually indicate a substantial likelihood that the child had lost support due to the disability of the parent, and which would also indicate that the relationship had been created for reasons not solely related to the acquisition of benefits. See Point II, *infra*.

In sum, the history of the Social Security Act shows that the eligibility standards here involved did not arise from a sudden desire to penalize illegitimates. Rather, the present standards reflect the nature of the Social Security Act as an insurance-based rather than a need-based system; the desire to prevent the possible manipulation of the system; the long-standing deference to state intestacy laws in defining familial relations; and the Act's purpose of providing benefits to those who are most likely to have lost support from the death or disability of the wage earner.

Just as in many other portions of the Social Security Act, these standards may result in the denial of benefits to persons who appear to have ties of affection and need fully as strong as those of persons who receive benefits. Thus, benefits are provided to wives, but not to mothers of illegitimate children. But unless administrators are to be required to perform the impossible task of measuring such affection, objective criteria must be used. So long as the criteria have a reasonable relationship to the end sought to be served, they are constitutional. Moreover, if there is such a reasonable basis for the legislative action, it is irrelevant whether Congress in fact articulated

the basis for its decision. *Flemming* v. *Nestor*, 363 U.S. 603, 612.

II

THE LIMITATION IN 42 U.S.C. 416(H)(3)(B) THAT SOCIAL SECURITY DISABILITY BENEFITS WILL BE PAID ONLY TO THOSE ILLEGITIMATE CHILDREN WHO MEET THE CONDITIONS THERE SPECIFIED HAS A RATIONAL BASIS BECAUSE IT FURTHERS THE PERMISSIBLE CONGRESSIONAL OBJECTIVE OF PROVIDING BENEFITS ONLY TO CATEGORIES OF PERSONS LIKELY TO HAVE LOST SUPPORT AS A RESULT OF THE DISABILITY OF A WAGE EARNER

The liberalization of the Social Security Act in 1965 through the enactment of Section 216(h)(3), 42 U.S.C. 416(h)(3) (see *supra*, pp. 2–3), was intended to effectuate the long-standing legislative purpose "to replace the support lost by a child when his father retires, dies, or becomes disabled." S. Rep. No. 404, 89th Cong., 1st Sess., p. 110 (1965).[6] In adding that Sec-

[6] Appellants assume (Br. 28–38) that the Act's purpose is to provide benefits whenever the wage earner's paternity is established. However, as the court stated in *Norton* v. *Weinberger*, 364 F. Supp. 1117, 1127 (D. Md.): "The child's insurance benefits provision of the Social Security Act is founded on the dual concepts of parentage and dependency. To be eligible for benefits, a claimant must be both the child of and dependent upon the deceased wage earner. 42 U.S.C. § 402(d)(1)." (The court there upheld the constitutionality of 42 U.S.C. 416(h)(3)(C)(ii), which requires otherwise ineligible illegitimate children to show that they lived with or were supported by their wage earner father, prior to his death, in order to obtain benefits.)

With regard to the Act's purpose of replacing lost support, the disability and child's insurance benefits here at issue are not based upon the recipient's needs. The amount of benefits depends upon the wage earner's previous earnings; the more he earned prior to his disability, the higher the benefits pro-

tion, Congress extended benefits to illegitimate children who, although they probably had lost support by a wage earner's disability, were not then entitled to benefits.[7] As a result of the amendment, benefits were provided to illegitimate children where, prior to becoming disabled, the wage earner (1) had acknowledged them, in writing, to be his children, (2) had been decreed by a court to be the father, (3) had been required by a court to support them, or (4) was living with them or contributing to their support before he became disabled.[8] We submit that Congress had a rational basis for limiting benefits to those categories of illegitimate children and was not required further to provide benefits for all illegitimate children born after the wage earner became disabled.[9]

---

vided. See 42 U.S.C. 415. The needs of the child do not affect the amount of benefits.

[7] In some states other than Illinois, an acknowledgment of paternity, or living with or contributing to the support of the child, or even public recognition of the child by the father, would enable the illegimate child to inherit under the state's intestacy laws, and thus make the child eligible for Social Security benefits under 42 U.S.C. 416(h)(2)(A), if the other requirements of 42 U.S.C. 402(d)(3) are met. See Appendix B, *infra*, and see discussion, *infra*, pp. 26–27 and note 14.

[8] The last two criteria ("living with" or "contributing") are relevant where the Secretary finds that the wage earner was the father of the child. See 42 U.S.C. 416(h)(3)(B)(ii).

[9] Appellants note (Br. 29–30) that children who do not qualify for dependents' benefits on the account of a disabled wage earner under 42 U.S.C. 416(h)(3)(B) may qualify for survivor's benefits under 42 U.S.C. 416(h)(3)(C) if the wage earner dies and argue that this is irrational. To the contrary, that result is consistent with the Act's purpose of avoiding manipulated claims, since Congress could reasonably conclude that such a claim could not be motivated by the deceased wage

These limitations are justified because children who meet these tests, or who have inheritance rights under state law, or whose parents underwent a formal marriage ceremony, are more likely to have lost support as a result of the disability of the wage earner than other children. For example, most children who can inherit, whether legitimate or illegitimate and whenever born, are likely to suffer some diminution of support at the death of the wage earner. As shown above, this was one of the reasons Congress shifted in 1939 from a lump-sum death benefit to continuing dependents' benefits. Since those who cannot inherit generally are unlikely to suffer the same loss of support on the death of the wage earner, Congress was justified in not providing benefits to those illegitimate children.

Other courts deciding analogous issues in Social Security cases have recognized the rationality of that Congressional conclusion and have upheld the provisions. *Watts* v. *Veneman*, 476 F. 2d 529 (C.A.D.C.); *Norton* v. *Weinberger*, *supra*, 364 F. Supp. at 1128; *Parker* v. *Secretary of Health, Education, and Welfare*, 453 F. 2d 850, 851–852 (C.A. 5); *Perry* v. *Richardson*, 440 F. 2d 677, 679 (C.A. 6). The court in *Watts*, *supra*, 476 F. 2d at 533, explained as follows (emphasis in original):

> Further, we see no problem with the incorporation of the District of Columbia intestacy laws into the Social Security laws for purposes of determining the eligibility for payments to illegitimates. In considering this incorporation,

---

earner's desire to increase his Social Security benefits without concern for the child's welfare.

it is vital that one bear in mind the *purpose* in making Social Security payments to dependent minors and the *nature* of such payments.

The entire thrust of the Social Security laws relevant to dependents is to provide benefits to those who were most likely to have relied upon the deceased for their support. In light of this overriding purpose, it is well-established that Social Security benefits are not accrued property rights. One's ability to receive benefits is not dependent solely upon the biological relationship between the decedent and his children, but also upon the probability that the children were dependent for support upon the deceased.

Congress in enacting the Social Security laws made various judgments about the probability that children are dependent. For example, it seems more logical that illegitimates would be dependent upon their father if he has recognized them, or if in fact he is contributing to their support. The incorporation of a state's intestacy laws for purposes of determining eligibility is in furtherance of this scheme. If an illegitimate child may not inherit, then the child's support following the father's death is less likely to be dependent upon what was received upon the deceased's death than if the child could receive property following the wage earner's demise.

It must be remembered that the Social Security laws do not exclude all illegitimates from eligibility for payments. * * * Rather, the laws are reasonably designed to disqualify a class of illegitimates who are less likely, as a class, to possess the requisite biological or legal relation-

ship to or economic dependency on the wage earner.[10]

Congress certainly acted rationally in concluding that social security benefits should be primarily designed to compensate for the loss of support resulting from a wage earner's disability. As the House Committee Report on the original Social Security Act noted, it was vital to the success of the program that

[10] But see, *contra*, *Beaty* v. *Weinberger*, 478 F. 2d 300 (C.A. 5), pending on appeal to this Court, No. 73–521. Although the court there accepted the proposition that "illegitimate children are less likely to be supported by their fathers than h(2) children * * *" (*id.* at 306), it nevertheless held that the administrative burden of identifying false claims could not justify excluding from coverage those children who cannot qualify under any of the Act's other provisions for illegitimate children, and who are born after the wage earner became disabled and therefore, cannot qualify under 416(h)(3)(B) (*id.* at 308). As we have shown, however, the statute has a rational basis, and that should have been the end of the court's inquiry. Moreover, the decision raises serious practical problems in cases where the application on behalf of a post-disability child is filed as soon as the child is born. The court of appeals in *Beaty* did not invalidate the provision in 416(h)(3)(B) which requires the illegitimate to show that it was in fact dependent. Accord, *Norton* v. *Weinberger*, *supra*, 364 F. Supp. 1117 (D. Md.; three-judge court) pending on appeal to the Court, No. 73–5598. It simply required those children who were born after the wage earner's disability to prove dependency as of the time the application for benefits was filed (478 F. 2d at 306–307, 308). In *Beaty*, as in the present case, the application on behalf of the children was filed well after the wage earner became disabled, thus providing a period of time which the Secretary can examine to determine whether the child received support from the wage earner. In most cases, however, when the application for child's benefits would be filed immediately after birth, there would be no such time period to guide the Secretary in determining the child's dependency.

the public view it as providing benefits to which the recipients were entitled and not as charity. "The Social Security system may be accurately described as a form of social insurance * * * whereby persons gainfully employed, and those who employ them, are taxed to permit the payment of benefits to the retired and disabled, and their dependents. * * * [I]ts specific provisions rest on predictions as to expected economic conditions which must inevitably prove less than wholly accurate, and on the Nation's resources which evolving economic and social conditions will of necessity in some degree modify" (*Flemming* v. *Nestor*, 363 U.S. 603, 609, 610). In formulating and amending the "highly complex and interrelated statutory structure" (*id.* at 610) which Congress found it necessary to adopt in order to provide an appropriate and functioning system of benefits, Congress did not abuse its broad discretion to formulate policy in this area when it concluded that the most appropriate touchstone for providing benefits was to replace the probable loss of support resulting from the disability of wage earners.[11]

---

[11] Nor do these provisions constitute an invalid "irrebutable presumption" that appellants' claim is fraudulent or that the wage earner is not the father, as appellants contend (Br. 33–34). Rather, Congress has determined that, if the other qualifying conditions were not met (see *supra*, pp. 2–3, 14–15), the purposes of the Act would not be served by extending benefits to categories of persons who are unlikely to have lost support as a result of their father's disability.

United States Department of Agriculture v. *Murry*, 413 U.S. 508, relied on by appellants, is inapposite. The Food Stamp program is based on need, and the presumption there invalidated—the fact that a parent had taken a tax deduction for a

Congress' attempt to limit dependents' benefits to those illegitimate children who are likely to have lost support by a wage earner's disability may sometimes provide benefits to children who did not lose support. But this is no basis for invalidating the limitation, which in its overall operation reasonably implements a valid Congressional purpose to provide benefits to those categories of children upon whom a wage earner's disability is likely to have the most serious impact.

Although Congress has granted benefits to illegitimate children born after the wage earner's disability who would inherit from him under state intestacy laws, or whose parents underwent a formal, though legally defective marriage ceremony, Congress was justified in not extending benefits to other children born after the wage earner's disability. Congress was warranted in creating a statutory plan that would facilitate the exclusion of fabricated and manipulated claims. As the district court recognized (353 F. Supp. at 1361), the possibility that evidence of parentage or support may be fabricated is greater when the child is not born until after the wage earner has become entitled to benefits. Any reliable test that might be devised to detect fabricated claims would necessarily entail substantial administrative burdens. Congress

---

child as a dependent in a prior year established that the household in which the tax dependent was living the following year was not in need—had no rational basis. The Social Security Act is not based on need, however, and Congress could reasonably conclude that the classes differentiated here had different likelihoods of having lost support. Finally, as shown below (pp. 26–27) illegitimacy at birth is not a permanent bar to receipt of benefits.

reasonably declined to extend benefits to this additional group of children, who, as shown, could reasonably be deemed less likely to have lost support by a wage earner's disability.[12]

---

[12] The statutory provisions for benefits for children adopted subsequent to a wage earner's disability involve similar considerations and reflect a similar solution. When the Social Security Amendments of 1960 extended benefits to after-adopted children, Congress attached safeguards designed to minimize the potential for abuse. It provided that benefits would be available only if the after-adopted child had been living with the wage earner before the onset of the disability (or if adoption proceedings had commenced by then) and if the adoption was decreed within two years after the disability entitlement. Social Security Amendments of 1960, Pub. L. 86–778, § 201(b), 74 Stat. 946. See *e.g.*, *Hagler* v. *Finch*, 451 F. 2d 45, 48 (C.A. 9), certiorari denied, 405 U.S. 1071. There was, at first, no exception to those requirements for children born after the wage earner became disabled. In 1967, Congress extended benefits to some after-adopted children who could not qualify under the 1960 law, but only to children whose adoption was effected by an elaborate two-step procedure which it considered necessary to avoid the feared abuse. Social Security Amendments of 1967, Pub. L. 90–248, § 112(a), 81 Stat. 838–839; see 42 U.S.C. 402(d)(8)(E). See *Morris* v. *Richardson*, 455 F. 2d 775 (C.A. 4), certiorari dismissed as improvidently granted, 410 U.S. 422.

In 1972, Congress withdrew benefits for children who were not adopted by a wage earner prior to the disability unless the child had been living with and receiving at least one-half of his support from the wage earner for at least a year prior to his entitlement to disability benefits. 42 U.S.C. 402(d)(8)(D) (1970 ed., Supp. II). The new requirements were imposed to insure that "benefits for a child who is adopted by a worker already getting old-age or disability benefits should be paid only when the child lost a source of support because his parent retired or became disabled, and that the law should include safeguards against abuse through adoption of children solely to qualify them for benefits." See S. Rep. No. 92–1230, 92d Cong., 2d Sess., p. 141. In 1973, the provision was slightly broadened to include

Appellants contend (Br. 27–36), however, that such cases as *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164, and *United States Department of Agriculture* v. *Moreno*, 413 U.S. 528, preclude the government from relying upon administrative burdens as a justification for the statutory provisions. In those cases the Court did not hold that administrative burdens were irrelevant, but only that a classification purportedly designed to avoid those burdens must be rationally related to the correction of abuses which could reasonably be contemplated. The present classification is carefully drawn to prevent spurious claims, and to limit benefits to children most likely to have lost support from a wage earner's disability. In light of the overall reasonableness of the classification, the government properly may rely upon prospective administrative burdens to justify the Congressional classification. Indeed, this Court has recognized, although in a different context, that administrative burdens and the attendant "drain on the [Social Security] trust fund" are relevant in considering the provisions of the Social Security Act. *Richardson* v. *Perales*, 402 U.S. 389, 406.

The Social Security program is based on actuarial considerations. At any particular tax level only a certain amount of total benefits can be provided. Each

---

grandchildren of the wage earner (or of the wage earner's spouse), who can now qualify if they can satisfy the special dependency requirements of Section 202(d)(8) at the time they file their applications. P.L. 93–66, Section 240(a); 87 Stat. 161. This continuing changing of qualifications illustrates Congress' endeavor to extend the Act's coverage while at the same time minimizing the potential for abuse.

533-480—74——4

amendment of the Social Security Act is carefully considered in light of its effect on the balance of the system. See, *e.g.,* S. Rep. No. 404, 89th Cong., 1st Sess., p. 135. Since the total amount available for benefits is limited, Congress properly may extend benefits to a class for the vast majority of whose members the Social Security system was intended to provide, while declining to extend benefits to another group containing a lesser proportion of such persons.

The fact that the Act does not afford relief for every aspect of the problem it was designed to solve does not invalidate it under the Due Process Clause. The legislature "may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind"; it "may select one phase of one field and apply a remedy there, neglecting the others" (*Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489).

In rejecting a recent constitutional challenge to Texas' welfare system which provides a lower percentage of need for recipients of Aid to Families with Dependent Children than for elderly or blind welfare recipients, this Court said:

> This Court emphasized only recently, in *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970), that in "the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." A legislature may address a problem "one step at a time," or even "select one phase of one field and apply a remedy there, neglecting the others." *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489 (1955).

> So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straitjacket. The very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving them. [*Jefferson* v. *Hackney*, 406 U.S. 535, 546–547.]

Finally, since the legislative classification is a reasonable one, appellants cannot escape its application by the claim that the evils with which Congress was concerned do not exist in their particular case. *North American Co.* v. *Securities and Exchange Commission*, 327 U.S. 686, 710–711; cf. *Dandridge* v. *Williams*, 397 U.S. 471, 485.

Griffin v. *Richardson*, 409 U.S. 1069, affirming 346 F. Supp. 1226 (D. Md.), and *Davis* v. *Richardson*, 409 U.S. 1069, affirming 342 F. Supp. 588 (D. Conn.), upon which appellants rely (Br. 25), are distinguishable. Those decisions invalidated 42 U.S.C. 403(a), which provided that when a family had so many children otherwise qualified for benefits that the total would exceed the maximum family benefit limit, illegitimate children would be denied benefits so that the other children could receive their full amount. There, the illegitimate children were otherwise qualified for benefits, but were denied them because the legitimate children's claims exhausted the amount to which the family was entitled. Here, the illegitimate children do not qualify for any benefits, and thus are not deprived of benefits to which they are otherwise entitled.

Similarly inapposite is *Gomez* v. *Perez*, 409 U.S. 535, which held that a state may not require a father

to support only his legitimate children but not his illegitimate children. As shown above, in the Social Security Act benefits are provided to illegitimate children on a basis which furthers the statutory purpose of replacing support lost by a wage earner's disability. In contrast, the Texas scheme at issue in *Gomez* excluded an illegitimate child from the right to obtain support from its father "simply because its natural father has not married its mother." 409 U.S. at 538. Unlike the statutory provisions here involved, the Texas statute had no rational basis.

III

THE VALIDITY OF THE PROVISIONS OF THE SOCIAL SECURITY ACT HERE CHALLENGED DEPENDS UPON WHETHER THEY ARE RATIONALLY BASED AND NOT UPON WHETHER THEY SERVE A COMPELLING STATE INTEREST

In *Richardson* v. *Belcher,* 404 U.S. 78, 81, this Court reaffirmed that a legislative classification in a social welfare statute does not deny equal protection or due process if it is "rationally based and free from invidious discrimination." This Court had articulated the "rational basis" test in *Dandridge* v. *Williams,* 397 U.S. 471, 485:

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequal-

> ity." *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78. "The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific." *Metropolis Theatre Co.* v. *City of Chicago*, 228 U.S. 61, 69–70. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *Maryland*, 366 U.S. 420, 426.

The Court further ruled in *Dandridge* that the justification for the challenged statutory classification was sufficient even though it would not apply to all the members of the class. See *supra*, pp. 19, 23.

The present case, like *Richardson* v. *Belcher*, 404 U.S. 78, and *Dandridge* v. *Williams*, 397 U.S. 471, involves not "freedoms guaranteed by the Bill of Rights" (*Dandridge*, 397 U.S. at 484), but benefits provided by statute "[i]n the area of * * * social welfare." *Id.* at 485. Therefore, it is the "rational basis" test, rather than the stricter "compelling [state] interest" test (see *Shapiro* v. *Thompson*, 394 U.S. 618, 634; *Carrington* v. *Rash*, 380 US. 89), which governs the validity of the Social Security Act provisions here involved. Every court that has considered the constitutionality of the various provisions of the Social Security Act relating to illegitimate children has applied the rational basis test. *Davis* v. *Richardson*, 342 F. Supp. 588 (D. Conn.), affirmed, 409 U.S. 1069; *Griffin* v. *Richardson*, 346 F. Supp. 1226 (D. Md.), affirmed, 409 U.S. 1069; *Watts* v. *Veneman*, 476 F. 2d 529 (C.A.D.C.); *Beaty* v. *Wein-*

berger, 478 F. 2d 300 (C.A. 5) pending on appeal to this Court, No. 73–521; *Severance* v. *Weinberger,* 362 F. Supp. 1348 (D. D.C.); *Norton* v. *Weinberger,* 364 F. Supp. 1117 (D. Md.).

Contrary to appellants' argument (Br. 39–43), the constitutional validity of the Social Security Act provisions here challenged do not require the strict scrutiny appropriate to review of statutes which discriminate on the basis of a "suspect category," such as race. The Social Security Act does not deny benefits to all illegitimate children. See *supra,* pp. 2–3, 14. Under 42 U.S.C. 402(d) and 42 U.S.C. 416(h), most illegitimate children are entitled to benefits.

With reference to the specific classification at issue here, illegitimate children born after the wage earner became disabled, as were Eugenio and Alicia, may qualify for benefits under the Act in states where they would inherit personal property from the wage earner under intestacy laws, 42 U.S.C. 416(h)(2)(A).[13] Post-disability illegitimate children may also qualify if their illegitimacy results from certain defects in their parents' ceremonial marriage, 42 U.S.C. 416(h)(2)(B). In addition, a child born illegitimately may receive benefits if he is legitimated in accordance with state law. See 42 U.S.C. 402(d)(3)(A); Social Security Administration Claims Manual 2421. Therefore, with respect to post-disability illegitimate children, the Act's exclusion is based not upon illegitimacy *per se,* but

[13] See Appendix B, *infra,* in which we have set forth the current sections of the Social Security Administration Claims Manual under which children's qualifications under 42 U.S.C. 416(h)(2)(A) are determined, and the state laws from which these state-by-state criteria are derived.

upon the circumstances of the child's illegitimate birth and State-determined consequences of the child's illegitimate status. These are factors which, as we have shown, substantially relate to the Act's purpose of replacing support lost when a wage earner becomes disabled. See *Norton* v. *Weinberger,* 364 F. Supp. 1117, 1122 (D. Md.) pending on appeal to this Court, No. 73–5598.

In any event, illegitimacy *per se* has not been, nor should it be declared a "suspect category." See *New Jersey Welfare Rights Organization* v. *Cahill,* 411 U.S. 619; *Gomez* v. *Perez,* 409 U.S. 535; *Weber* v. *Aetna Casualty & Surety Co.,* 406 U.S. 164; *Labine* v. *Vincent,* 401 U.S. 532; *Levy* v. *Louisiana,* 391 U.S. 68; *Glona* v. *American Guarantee Co.,* 391 U.S. 73. Illegitimacy of birth differs importantly from the categories that have been viewed as suspect and hence subject to strict scrutiny. Illegitimacy is not a highly visible characteristic, and the status can be changed.[14] See *Frontiero* v. *Richardson,* 411 U.S. 677, 686–687.

---

[14] Under Illinois law (applicable to appellants' eligibility under 42 U.S.C. 416(h)(2)(A)), children whose parents' ceremonial marriage is void are legitimate, Ill. Ann. Stat. ch. 89, § 17a. An illegitimate child whose parents marry and who is acknowledged by the father as his child is legitimated, Ill. Ann. Stat. ch. 3, § 12. States other than Illinois afford various procedures for legitimating children born out of wedlock. See generally, Krause, *Illegitimacy: Law and Social Policy,* pp. 9–21 (1971). Moreover, the children's status under the Social Security Act is not immutable. For example, Alicia and Eugenio would qualify for benefits if Ramon adopted them. See 42 U.S.C. 402(d)(3), 416(e) and Ill. Ann. Stat. ch. 4, Sections 9.1–2 and 9.1–3. See also 42 U.S.C. 402(d)(8)(C), as amended, Social Security Amendments of 1972, P.L. 92–603, Section 111(a), 86 Stat. 1346–1347. Also, the father of illegiti-

CONCLUSION

It is therefore respectfully submitted that the judgment of the district court should be affirmed.

ROBERT H. BORK,
Solicitor General.
IRVING JAFFE,
Acting Assistant Attorney General.
DANNY J. BOGGS,
Assistant to the Solicitor General.
WILLIAM KANTER,
STANTON R. KOPPEL,
Attorneys.

MARCH 1974.

---

mate post-disability children may take action in many states, short of marriage or adoption, that would qualify them to inherit from him, and thus become eligible for benefits under 42 U.S.C. 416(h)(2)(A). See Appendix B, *infra*.

Appendix A

Section 202(d) of the Social Security Act, 42 U.S.C. 402(d), provides in pertinent part:

(d)(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—

(A) has filed application for child's insurance benefits,

* * * * *

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit * * *.

* * * * *

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection unless, at such time, such individual was not living with or contributing to the support of such child and—

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) or section 416(h)(3) of this title shall be deemed to be the legitimate child of such individual.

* * * * *

Section 216 of the Social Security Act, 42 U.S.C. 416 provides in pertinent part:

(e) The term "child' means (1) the child or legally adopted child of an individual, * * *.

* * * * *

(h)(2)(A) In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this subchapter, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or, if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

(B) If an applicant is a son or daughter of a fully or currently insured individual but is not (and is not deemed to be) the child of such in-

sured individual under subparagraph (A), such applicant shall nevertheless be deemed to be the child of such insured individual if such insured individual and the mother or father, as the case may be, of such applicant went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of paragraph (1) (B), would have been a valid marriage.

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2) of this subsection, shall nevertheless be deemed to be the child of such insured individual if:

* * * * *

(B) in the case of an insured individual entitled to disability insurance benefits, or who was entitled to such benefits in the month preceding the first month for which he was entitled to old-age insurance benefits—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his son or daughter,

(II) has been decreed by a court to be the father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his son or daughter,

and such acknowledgment, court decree, or court order was made before such insured individual's most recent period of disability began; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be

the father of the applicant and was living with or contributing to the support of that applicant at the time such period of disability began; * * *.

* * * * *

Appendix B

The Social Security Administration Claims Manual, set forth below in pertinent part, provides a listing of the criteria used to determine when an illegitimate child may qualify under 42 U.S.C. 416(h)(2)(A) provided the requirements of 42 U.S.C. 402(d)(3) are also met. The statutory authority for each provision is enclosed in parentheses following the name of the State.

2424.5 Individual State Laws on Legitimation and Recognition

Section 2424.6 shows how a child or parent can acquire status as such under State law. See § 2424.7 for the date from which legitimation is effective.

In § 2424.6 certain acts giving a child status are marked with the symbol "D." This means that the act so marked constitutes acknowledgment of the child for inheritance purposes, but does not constitute legitimation; therefore, while the act establishes the relationship of the child to the parent, the child's dependency on the parent is established only if the child meets either one of the two dependency tests for illegitimates set out in § 2654.

2424.6 Digest of State Laws on Acts Constituting Legitimation or Acknowledgment

Alabama (Alabama Code, Tit. 27, § 10 (1958); Tit. 27, § 11 (Supp. 71)).—Child acquires status of child if (1) parents intermarry and father recognizes child, or (2) father makes declaration in writing attested by two witnesses, setting forth child's name, sex, age, name of mother, and stating that he thereby recognizes it as his child, capable of inheriting his estate, real and personal, as if born in wedlock; the declaration

must be acknowledged before probate judge of county of residence or proved by attesting witnesses, filed in office of probate judge, and recorded on minutes of his court.

Father acquires status of parent if parents intermarry and father recognizes child.

Alaska (Alaska Statutes, § 25.20.050 (1962)).—Child or father acquires status of child or parent if (1) parents intermarry, or (2) father acknowledges paternity of child in writing (does not apply if father or child died before 6/1/60), or (3) father adjudged to be the father by a superior court.

Arizona.—In order for child or father to acquire status of child or parent, neither recognition nor legitimation is necessary if child born after 3/17/21 (see § 2420.6).

Arkansas (Arkansas Stat. Ann., § 61–141).—Child or father acquires status of child or parent if parents intermarry and father recognizes child.

California (Cal. Prob. Code, § 255 (Supp. 1972)).—Child acquires status of child if (1) parents intermarry, or (2) father publicly acknowledges child as his own, receives it as such into his family (with wife's consent if he is married) and otherwise treats it as his legitimate child, or (3)(D) father acknowledges child in writing signed in presence of competent witness.

Father acquires status of parent if (1) parents intermarry, or (2) father publicly acknowledges child as his own, receives it as such into his family (with wife's consent if he is married) and otherwise treats it as his legitimate child.

Colorado (Colo. Rev. Stat. Ann., § 153–2–8 (1963)).—Child acquires status of child if (1)(D) parents intermarry and father subsequently recognizes child, or (2)(D) if father alive after 5/11/59, the father during his lifetime in writing, by his conduct,

or otherwise acknowledged the child to be his and regularly contributed to his support and maintenance for a reasonable period prior to his death.

Father acquires status of parent if child is alive after 5/11/59 and (1) the parents intermarry and father subsequently recognizes child, or (2) father, during child's lifetime in writing, by his conduct, or otherwise acknowledged the child to be his and regularly contributed to his support and maintenance for a reasonable period prior to his death.

Connecticut (Conn. G.S.A., § 45–274 (1958)).—Child or father acquires status of child or parent if parents intermarry.

Delaware (Del. C. § 1301 (1953), 1304 (Supp. 70)).—Child or father acquires status of child or parent if (1) parents intermarry before the child's birth or (2) they intermarry after adjudication of parentage after child's birth or (3) they intermarry after acknowledgment of parentage after child's birth; or (4) there is written acknowledgment of child's paternity on or after 12/7/65 by both parents if both are living, or by father if mother has died, and such acknowledgment is filed in Prothonotary's office of any Delaware county. Submit to regional attorney under § 4529(*d*)(2) cases where acknowledgment of paternity occurred before 12/7/65 and parents have not intermarried.

District of Columbia (D.C. Code § 16–2345).—Child or father acquires status of child or parent if parents intermarry and father acknowledges child.

Florida (Fla. Stat. Ann., §731.29 (1963)).—Child acquires status of child if (2) parents intermarry, or (2)(D) father acknowledges himself to be such in writing signed in presence of competent witness.

Father acquires status of parent if parents intermarry.

Georgia (Ga. Code Ann., §74–104 (1964)).—Child acquires status of child if (1) mother and reputed father intermarry and father recognizes child, or (2) decree of superior court of county of father's residence legitimates child upon petition of father.

Father acquires status of parent if mother and father intermarry and latter recognizes child.

Hawaii (Hawaii Rev. Stat., §338–21 (1968)).—Child or father acquires status of child or parent if parents intermarry.

Idaho (Idaho Code, §15–2–109 (Supp. 1971)).—Child acquires status of child if (1) parents intermarry, or (2) father publicly acknowledges child as his own, receives it as such into his family (with wife's consent if he is married) and otherwise treats it as his legitimate child or (3) a court finds that an individual is the father of a child and makes an order of filiation declaring paternity, provided that the child was conceived on or after 5/26/69, or (4)(D) father acknowledges child in writing signed in presence of competent witness.

Father acquires status of parent if (1) parents intermarry, or (2) a court finds that an individual is the father of a child and makes an order of filiation declaring paternity, provided that the child was conceived on or after 5/26/69 or, (3) father publicly acknowledges child as his own, receives it as such into his family (with wife's consent if he is married) and otherwise treats it as his legitimate child.

Illinois (Ill. Ann. Stat., Prob. Act § 12 (Supp. 73)).—Child or father acquires status of child or father if parents intermarry and father acknowledges child.

Indiana (Ind. Stat. Ann., § 6–207 (1953)).—Child or father acquires status of child or father if (1) prior to 1/1/54, parents intermarry and father acknowl-

edges child (legitimating father need not be natural father of child); or (2)(D) effective 1/1/54, parents intermarry and father acknowledges child (acknowledging father must be putative father of child); or (3)(D) effective 1/1/54, paternity of child is established by law during father's lifetime; or (4)(D) where father died, or application in a life case was filed, before 1/1/54, father theretofore acknowledged child.

Iowa (Ia. Code, § 633.222 (1963)).—Child acquires status of child if (1) parents intermarry, or (2)(D) paternity is proven during father's lifetime, or (3)(D) father recognizes child and recognition is either general and notorious or in writing.

Father acquires status of parent if (1) parents intermarry, or (2) father's recognition of child has been general and notorious or in writing, and the recognition of the relationship was mutual.

Kansas (Kan. Stat. Ann., §§ 23-125, 126; 59-501 (1963)).—Child acquires status of child if (1) parents intermarry and recognize child; or (2)(D) father has notoriously or in writing recognized paternity of child; or (3)(D) paternity has been determined in father's lifetime in any action or proceeding involving that question in court of competent jurisdiction.

Father acquires status of parent if (1) parents intermarry and recognize child; or (2) father has notoriously or in writing recognized paternity of child; or (3) paternity has been determined in father's lifetime in any action or proceeding involving that question in court of competent jurisdiction.

Kentucky (Ky. Rev. Stat. Ann., § 391.090 (Baldwin, 1973)).—Child or father acquires status of child or parent if parents intermarry and father recognizes child.

Louisiana (La. Civil Code, § 202 *et seq.*).—There are four classes of children born out of wedlock:

(A) A child born of parents who could have married at the time child was conceived can be legitimized or acknowledged as indicated in (1) through (4) below.

(1) If parent was alive after noon of 7/26/44, child acquires status of child and each parent whenever the parents have intermarried and have formally or informally acknowledged the child as their child, either before or after the marriage. (Whether the marriage or the acknowledgment took place before or after noon of 7/26/44, is immaterial.) If parent died before noon of 7/26/44, child acquired status of child and each parent acquired status of parent if parents intermarried and legally acknowledged child as their own either before a marriage by declaration before a notary public and two witnesses, or informally to the person performing the marriage.

(2) Child acquires status of child as to acknowledging parent and acknowledging parent acquires status of parent if child is acknowledged in writing before notary public and two witnesses, and a statement is included declaring intention of parent making declaration to legitimate the child, *provided* the acknowledging parent does not have legitimate ascendants or descendants.

(3)(D) Child acquires status of child as to acknowledging parent and acknowledging parent acquires status of parent if child is acknowledged in registering birth or baptism of child, or by declaration in writing before notary public and two witnesses.

If parent is the father, dependency must be established by living with or contributions toward support from the acknowledging father. If parent is the mother, see § 2654.

(4)(D) Informal acknowledgment may be sufficient for child to acquire a child's status, but if parent if the father, dependency must be established by living with or contributions toward support from the acknowledging father. If parent is the mother, see § 2654.

Informal acknowledgment is not sufficient for mother or father to acquire a parent's status.

Submit to the regional attorney under § T4510(*d*)(2) cases involving the status of mother and child in which there is proof of maternity alone without evidence of acknowledgment by the mother.

(B) A child born to parents one or both of whom were married to another individual when the child was conceived is known as an adulterous illegitimate child.

An adulterous illegitimate child could not have been acknowledged or legitimated by a parent who died before noon of 7/28/48. If the parent died after that time, an adulterous illegitimate child is legitimated by the subsequent valid marriage of his parents if the parent(s) formally or informally acknowledged him either before or after the marriage ceremony. (See § 2411 for necessity of disavowal action by mother's legal spouse.)

(C) A child born to persons who are related to a degree within which marriage between them is prohibited (an incestuous illegitimate child) cannot be legitimated or acknowledged.

(D) A child born to persons whose marriage was not valid because of some legal impediment which existed when the child was conceived. This child can be acknowledged as shown in (A) (2), (3), and (4) if the impediment is not a previous undissolved marriage. The child is legitimated by a subsequent valid marriage of the parents and the formal or informal acknowledgment of the child before or after the cere-

mony. The child is also legitimated if the marriage of his parents is validated by statute.

Generally, where a marriage has been dissolved by divorce on the grounds of adultery, the remarriage of the guilty spouse with his or her accomplice in adultery is void and children born of such marriage are not legitimate except under the following circumstances. If such marriage was contracted before noon 7/30/58, children born of the marriage are deemed legitimate as of noon 7/30/58, or as of the date of birth whichever is later. If the marriage was contracted after noon 7/30/58, and before noon 8/1/62, children born of the marriage are deemed legitimate as of 8/1/62, or as of the date of birth whichever is later. The validations mentioned do not apply to a marriage which is dissolved by the death of one of the parties prior to the effective date, and children born of such marriage are not legitimate. If the marriage had been judicially dissolved before the pertinent effective date, submit to the regional attorney under § T4510 (*d*)(2). Submit to the regional attorney under § T4510 (*d*)(2) if claimant contends child is legitimate from birth rather than effective date under this validation provision. If such marriage was contracted after noon of 8/1/62, and before 12/31/62, children born thereof are legitimate from birth, and children born prior to such marriage are legitimated from the date of such marriage, if acknowledged either formally or informally before or after the ceremony. If the marriage was contracted on or after 12/31/62 and prior to noon of 7/27/66 and was in existence on 7/27/66, children born of the marriage are deemed legitimate. As to the date as of which a child of such marriage is deemed legitimate, submit to the regional attorney under § T4510 (*d*)(2), where material.

Maine (18 Maine Rev. Stat. Ann., § 1003 (1964)).—Child or father acquires status of child or parent if (1) parents intermarry; or (2) father adopts child into his family; or (3) father acknowledges in writing before justice of the peace or notary public that he is the father.

Maryland (93 Md. Ann. Code, § 1-208 (1957)).—Child or father acquires status of child or parent if parents intermarry and father acknowledges child, or (2)(D) if the father is alive on or after 1/1/70, child acquires status of child also if father has been judicially determined to be father of child in paternity proceedings or father has acknowledged himself, in writing, to be father or father has openly and notoriously recognized child to be his child.

Massachusetts (Mass. Gen. Laws Ann., Ch. 190, § 7 (West, 1958)).—Child or father acquires status of child or parent if (1) parents intermarry and father acknowledges child, or (2) effective 3/11/43, parents intermarry and alleged father is adjudged the father of the child by court in action against him under statute providing penalty for getting woman other than lawful wife with child.

Michigan (Mich. Stat. Ann., § 27.3178 (153) (Supp. 73)).—Child or father acquires status of child or parent if (1) parents intermarry; or (2) father on or before 1/9/42, acknowledged child by writing, under his own hand, executed and acknowledged in the same manner as for deeds of real estate and recorded in office of judge of probate of county in which father was resident; or (3) on or after 1/10/42, father and mother acknowledged child by writing under their hands, executed and acknowledged in the same manner as for deeds of real estate and recorded in office of judge of probate of county in which father

or mother is resident. It is not necessary for the mother to join in the acknowledgment where she is disqualified to act by reason of insanity, mental capacity, death, or if for any other reason satisfactory to the probate judge, it is not practical for her to do so.

Minnesota (Minn. Stat. Ann., § 525.172 (West, 1969)).—Child acquires status of child if (1) parents intermarry, or (2)(D) father in writing before competent attesting witness had declared self to be father of child, or (3)(D) death of the father occurs on or after 4/21/71, and father has been determined to be the father of the child in a paternity proceeding before a court of competent jurisdiction.

Father acquires status of parent if parents intermarry.

Mississippi (Miss. Code Ann., § 91–1–11, 93–17–1, 93–9–29 (1972)).—Child acquires status of child if (1) parents intermarry and father acknowledges child, or (2) chancery court, upon petition of father, has legitimated child, or (3)(D) after 6/30/62, the county, circuit, chancery, or family court expressly grants inheritance rights in paternity and support of child order.

Father acquires status of parent if parents intermarry and father acknowledges child.

Missouri (Mo. Stat. Ann., § 474.070 (Vernon, 1956)).—Child or father acquires status of child or parent if parents intermarry and father recognizes child.

Montana (Montana Rev. Codes Ann., § 91–404 (1964)).—Child acquires status of child if (1) parents intermarry, or (2) before 7/1/57, an illegitimate child was legitimated if the father publicly acknowledged the child, received it as such into his family (with wife's consent if he was married), and otherwise

treated it as his legitimate child, or (3)(D) father acknowledges child by statement in writing signed in presence of competent witness.

Father acquires status of parent if (1) parents intermarry, or (2) before 7/1/57, father publicly acknowledged the child, received it as such into his family (with wife's consent if he was married), and otherwise treated it as his legitimate child.

Nebraska (Nebraska Rev. Stat., § 30–109 (1964)).—Child acquires status of child if (1)(D) father in writing signed in presence of competent witness acknowledged himself to be father of child, (2) effective 8/24/41, parents intermarry.

Father acquires status of parent if parents intermarry.

Nevada (Nev. Rev. Stat., § 134.170 (1967)).—Child acquires status of child if (1) parents intermarry, or (2) before 3/28/53, father publicly acknowledged child as his own or received it as such into his family (with wife's consent if he was married), or otherwise treated it as his legitimate child, consent of mother of child being necessary unless she had been deprived of civil rights, judicially deprived of child's custody, or declared incurably feebleminded or insane by a court, or had deserted child without provision for her identification; or (3)(D) father acknowledges child as his own by statement in writing signed in presence of competent witness. The witness must also sign the acknowledging writing.

Father acquires status of parent if (1) parents intermarry, or (2) before 3/28/53, father publicly acknowledged child as his own or received it as such into his family (with wife's consent if he was married), or otherwise treated it as his legitimate child, consent of mother of child being necessary unless she had been deprived of civil rights, judicially de-

prived of child's custody, or declared incurably feeble-minded or insane by a court, or had deserted child without provision of her identification.

New Hampshire (New Hampshire Rev. Stat. Ann., § 457.42 (1968)).—Child or father acquires status of child or parent if parents intermarry and father recognizes child.

New Jersey (N.J. Stat. Ann., § 3A:4–7 (West, 1953)).—Child or father acquires status of child or parent if parents intermarry and treat child as their own.

New Mexico (N.M. Stat. Ann., § 29–1–18 (Supp. 73), 29–1–20 (1953)).—Ignore the bracketed material in the following sentence if the WE died, or application is filed in a life case, after 6/13/47.

Child acquires status of child if (1) parents intermarry, or (2)(D) father has recognized child [and recognition has been either (*a*) general and notorious, or (*b*)] in writing signed by reputed father [in presence of 2 competent witnesses] showing upon its face that it was signed with intent to recognize child as heir.

Father acquires status of parent if (1) parents intermarry, or (2) father has recognized child (see requirements in (2) above), and recognition of relationship has been mutual.

New York (N.Y. Est. Powers, and Trust Law, § 4–1.2 (West, 1967)).—Child or father acquires status of child or parent if (1) parents intermarry, or (2)(D) during lifetime of father, court of competent jurisdiction has issued Order of Filiation declaring paternity in a proceeding instituted during mother's pregnancy or within 2 years after child's birth. This latter provision is applicable only where death of father occurred on or after 3/1/66 or, in life cases, to benefit applications effectively filed on or

after that date and applies regardless of whether order declaring paternity was issued before, in or after 3/66, but provision confers inheritance rights only on or after 3/1/66.

North Carolina (Gen. Stat. of N.C., § 29–18 (1966)).—Child acquires status of child if (1) parents intermarry, or (2) child is legitimated by superior court upon petition of reputed father.

Father acquires status of parent if child is legitimated by superior court upon petition of reputed father.

North Dakota (N.D. Cent. Code § 56–01–05 (Supp. 1969)).—In order for a child or father to acquire the status of child or parent, neither recognition nor legitimation is necessary if the child was born in North Dakota before 1/17/45 or after 6/30/69 (see § 2420.6). If the child was born after 1/16/45 but before 7/1/69, the child may acquire the status of child if there is compliance with the California rules in this section as to legitimation and acknowledgment. If the child cannot acquire status of child under these rules, submit the case to the regional attorney under § 4529(*d*)(2) to determine the status of the child under section 56–01–05 of the North Dakota Century Code.

Ohio (Ohio Rev. Code Ann. § 2105.18).—Child acquires status of child if (1) parents intermarry and father acknowledges child, or (2) effective 10/14/53, the child born to an unmarried woman is declared legitimate by probate court decree upon the application and acknowledgement of the child's father and with the consent of the child's mother or, if the mother is deceased, incompetent or has surrendered custody of the child, with the consent of the person or agency having custody of the child, or of the court having jurisdiction over the child's custody, or (3)(D) a prop-

erly executed declaration of heirship is filed by the parent with the probate judge of the county.

Father acquires status of parent if (1) parents intermarry, or (2) effective 10/14/53, the child born to an unmarried woman is declared legitimate by probate court decree upon the application and acknowledgment of the child's father and with the consent of the child's mother or, if the mother is deceased, incompetent or has surrendered custody of the child, with the consent of the person or agency having custody of the child, or of the court having jurisdiction over the child's custody, or (3) a properly executed declaration of heirship is filed by the child when of sufficient age, with the probate judge of the county.

Oklahoma (Okla. Stat. Ann., Tit. 84, § 215 (1961); Tit. 10, 55 (1961)).—Child acquires status of child if (1) parents intermarry, or (2) father publicly acknowledges child as his own, receives it as such into his family (with wife's consent if he is married) and otherwise treats it as his legitimate child, or (3)(D) father acknowledges child in writing signed in presence of competent witness.

Father acquires status of parent if (1) parents intermarry, or (2) father publicly acknowledges child as his own, receives it as such into his family (with wife's consent if he is married) and otherwise treats it as his own.

Oregon (Ore. Rev. Stat. §§ 111.231, 109.060 (1957)).—In order for child or father to acquire status of child or parent, neither recognition nor legitimation is necessary (see § 2420.6). Child is legitimate from date of birth regardless of whether or not WE was alive on date legislation enacted, 8/20/57.

Pennsylvania (Con. Penna. Statutes, Tit. 20, § 2107 (1972)).—Child or father acquires status of child or parent if parents intermarry.

Rhode Island (Gen. Laws of R.I., § 33–1–8 (1956)).—Child or father acquires status of child or parent if parents intermarry and father acknowledges child.

South Carolina (Code of Laws of S.C., § 20–5.1 (1962)).—Child or father acquires status of child or parent if (1) parents intermarry, or (2) children's court, upon petition of putative father, declares child legitimate.

South Dakota (S.D. Compiled Laws Ann., § 29–1–15 (1967)).—Child acquires status of child if (1) parents intermarry, or (2) father publicly acknowledges child as his own, receives it as such into his family (with wife's consent if he is married) and otherwise treats it as his legitimate child, or (3)(D) father acknowledges child in writing signed in presence of competent witness.

Father acquires status of parent if (1) parents intermarry, or (2) father publicly acknowledges child as his own, receives it as such into his family (with wife's consent if he is married) and otherwise treats it as his legitimate child.

Tennessee (Tenn. Code. Ann., § 36–307 (1956), 36–302, 306, § 36–234 (Supp. 71)).—Child acquires status of child if (1) child is declared legitimate by decree of circuit, probate, or county court or after *3/9/65 by decree of juvenile court*, or (2) parents intermarry and after 3/30/49, father recognizes child, or (3)(D) after 3/14/55, an order of paternity and support of child has been entered by juvenile court following father's conviction in bastardly proceeding.

Father acquires status of parent if parents intermarry and after 3/30/49, father recognizes child.

Texas (Ann. Tex. Stat. Probate Code, § 42 (Vernon, 1956)).—Child or father acquires status of child or parent if parents validly intermarry subsequent to

birth of child and, before 1/1/56, father recognizes child. After 12/31/55, valid marriage of parents and proof that parent was biological father is sufficient.

Utah (Utah Code Ann., 77–60–14 (Supp. 73); 74–4–10 (1953)).—Child acquires status of child if (1) parents intermarry, or (2) father publicly acknowledges child as his own, receives it as such into his family (with wife's consent if he is married) and otherwise treats it as his legitimate child, or (3)(D) father acknowledges himself to be the father.

Father acquires status of parent if (1) parents intermarry, or (2) father publicly acknowledges child as his own, receives it as such into his family (with wife's consent if he is married) and otherwise treats it as his legitimate child.

Vermont (Vermont Stat. Ann., Tit. 14, § 554 (1959); § 553 (Supp. 73)).—Child acquires status of a child if (1) parents intermarry and father recognizes child, or (2)(D) the child acquires the status of a child under Title 14, Sec. 553 of the Vermont Statutes Annotated, as amended in 1968, if the father is alive on 3/26/68 and (*a*) he has been declared the putative father of the child in a Vermont bastardy proceeding (Sec. 339 of Title 15 of the Vermont Statutes Annotated) or (*b*) he has openly and notoriously claimed the child to be his. Where judgment in a bastardy proceeding or open and notorious claim of paternity by father occurred prior to 3/26/68, or where after development it is not clear as to whether evidence is sufficient to show open and notorious claim of paternity, submit to regional attorney under § 4529 (*d*)(2) for an opinion.

Father acquires status of parent if the parents intermarry and father recognizes child.

Virginia (Code of Va., § 64.1–6 (1950)).—Child or father acquires status of child or parent if parents intermarry and father recognizes child.

Washington (Wash. Rev. Code. Ann., § 11.04.081 (B–W, 1967)).—Child acquires status of child where (1) parents intermarry, or (2)(D) effective 7/1/67, the child acquires the status of a child if the father acknowledges him in writing. Proof of actual paternity is not necessary.

Father acquires status of parent if parents intermarry.

Before 7/1/67 the child acquires the status of child if father acknowledges child by statement in writing signed in presence of competent witness. Submit the case to the regional attorney through channels for an opinion, if the acknowledgment is not signed in the presence of a competent witness and one or more of the following questions are involved and material to entitlement.

(1) What is the effect if the father executed such an acknowledgment and died prior to 7/1/67?

(2) What is the effect of an acknowledgment that was executed prior to 7/1/67?

(3) Whether the acknowledgment enables the father to acquire inheritance rights from the child.

(4) If such acknowledgment permits the father to acquire inheritance rights from the child, would this also apply if the child died prior to 7/1/67?

West Virginia (W. Va., Code, § 42–1–6 (1966)).—Child or father acquires status of child or parent if parents intermarry. (Before 1/1/31, parents must have intermarried and father must have recognized the child.)

Wisconsin (Wisc. Stat. Ann., § 245.25 (Supp. 72); § 852.05 (1971)).—Child acquires status of child if (1) parents intermarry, or (2)(D) individual (*a*) acknowledges himself to be father of child in writing signed in presence of competent witness (in the case of death of acknowledging individual after 3/31/71 or if such acknowledgment occurred after 3/31/71, acknowledgment in writing need not be in presence of competent witness), or (*b*) has been adjudged in bastardy proceeding to be the father, or (*c*) has admitted in open court that he is the father.

Father acquires status of parents if parents intermarry.

Wyoming (Wyo. Stat. §§ 2–44, 35–60 (1957)).—Child acquires status of child if parents intermarry and father subsequently recognizes child.

Such intermarriage and recognition legitimates the child rather than only recognizing the child for inheritance purposes as was previously shown in this section. This represents a change of position effective 5/8/64, and claims denied on or after that date may be reopened under the rules of administrative finality based on an error on the face of the evidence.

Father acquires status of parent if parents intermarry and father subsequently recognizes child.

U.S. GOVERNMENT PRINTING OFFICE: 1974